IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1713 OF 2005

M/s. Getwell Board & Paper Private Limited
B/4, Manoj Industrial Premises Coop. Society
Ltd. Plot nO. 40/A, Katraka Road, Wadala,
Mumbai 400 031. ..... Petitioner
vs.

1. Fakruddin S. Lokhandwala
2. M. M.Sayyed, Presidign Officer . . ... Respondents

Mr. C. R. Naidu with Mr. Aditya Chitale for petitioner
Mr. Rajesh Gelani for respondent no.1.

CORAM: D. G. KARNIK **J.**
DATE: 17/7/2006

ORAL JUDGMENT:

1. Heard counsel.
2. By this petition the petitioner challenges the judgment and order dated 2nd March 2005 passed by respondent no.2, the Labour Court, Mumbai, awarding the respondent no.1 a sum of Rs.14,10,000/- by allowing his application under section 33C(2) of the Industrial Disputes Act (for short ' hte Act' .)
3. According to respondent no.1 (for short the respondent), his services were terminated by the petitioner in May 1989. The petitioner disputed this and contended that the services of the respondent were not terminated but he abandoned the service in May 1999. The respondent approached the Labour Commissioner for conciliation. In the conciliation proceedings

he did not press the claim for reinstatement in service but claimed Rs.2 lakhs as arrears of commission allegedly payable to him. The Conciliation Officer recorded that the respondent had refused to join the duties but had claimed Rs.2 lakhs as commission and therefore the matter could not be settled. The Conciliation Officer has accordingly directed the respondent to approach the appropriate court for resolution of the dispute. The respondent thereafter filed an application under section 33C (2) of the Act claiming Rs.16,60,000/- as arrears of commission due and payable to him for the period from 1990 to 1999. By its judgment and order dated 2nd March 2005 the Labour Court directed the petitioner to pay the respondent a sum of rs.14,10,000/- by way of commission. That judgment is impugned in this petition.

4. Learned counsel for the petitioner submitted that the respondent himself had initially approached the Labour Commissioner (Conciliation Officer) for reinstatement. Before the Conciliation Officer the respondent refused to rejoin the service which was offered by the petitioner but demanded a sum of Rs.2 lakhs by way of arrears of commission. He was therefore advised to approach the appropriate court. Thereafter the respondent made a huge claim of Rs.14,16,000/- by way of commission., inconsistent with his claim before the Conciliation Officer where he had firstly claimed reinstatement, then claimed Rs.2 lakhs by way of commission. Thus the case of respondent was inconsistent and the Labour Court ought not to have

granted any relief to the petitioner.

5. Counsel for the petitioner further submitted that the claim made by respondent of Rs.16,60,000/- was untenable. The petitioner had never agreed to pay any commission to the respondent. The fact that the respondent was making a claim of commission for the period from the year 1990 to 1999 shows that no commission was never paid to him during this particular period, that is during the entire period of employment. He further submitted that the petitioner had denied the claim of the respondent and he was not entitled to make a claim in an application under section 33C(2) of the Act. According to him section 33C(2) of the Act applies only in respect of claims which were admitted or adjudicated upon in the past. In this connection he relies upon the decisions of the Supreme Court in **Bombay Gas Company Vs. Gopal Bhiva and ors.**, reported in AIR 1964 S.C. 752, Municipal Corporation of Delhi vs. Ganesh Razak and anr. , reported in 1995 1 CLR 170 and State of U.P. and anr. vs. Brijpal Singh , reported in CDJ 2005 SC 705.

6. In Bombay Gas Co., (supra) the Supreme Court held that the proceedings contemplated by section 33C(2) are analogous to execution proceedings and in those proceedings it is open to the Labour Court to compute in terms of money the benefit claimed by an industrial employee, while interpreting the award. In para 7 of the judgment the Supreme Court observed :

> "The proceedings contemplated by s. 33C(2) are, in many cases, analogous to execution proceedings, and the Labour Court which is called upon to compute in terms of money the benefit claimed by an industrial employee is, in such cases, in the position of an executing court; like the executing court in execution proceedings governed by the Code of Civil Procedure, the Labour Court under s. 33C(2) would be competent to interpret the award on which the claim is based, and it would also be open to it to consider the plea that the award sought to be enforced is a nullity."

7. In Municipal Corporation (supra) the Supreme Court held that the Labour Court had no jurisdiction to adjudicate upon and decide the workmen's entitlement and then proceed to compute the benefit so adjudicated. It is only when the entitlement has been earlier adjudicated or recognized by the employer then for the purpose of implementation or enforcement thereof application can be made under section 33C(2). In para 12 of its judgment the Supreme Court held as follows:

> "The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement

is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen' s entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court 's power under section 33-C(2) like that of the Executing Court' spower to interpret the decree fo the purpose of its execution."

8. In State of UP (supra) the Supreme Court observed in para 9 of its decision, as follows:

"This Court in the case of Punjab Beverages Pvt. Ltd. vs. Suresh Chand, (1978) SCC 144 held that a proceeding under section 33C(2) is a proceeding in the nature execution proceeding in which the Labour Court calculates the amount of money due to workman from the employer, or , if the workman is entitled to any benefit which is capable being computed in terms of money, proceeds to compute

> the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the Industrial workman, and his employer."

9. It is thus clear that where the right to claim made by an industrial employee is disputed the Labour Court would not be entitled to adjudicate upon the same. When the right to a claim is crystallized either by an earlier award or is admitted by an employer but is not paid the Labour Court would get jurisdiction to pass an order under section 33C(2). Similarly where any benefit which can be computed in terms of money has already been adjudicated upon or is admitted by an employer the Labour Court can compute the value. Where the right claimed is disputed the claim must be established by the industrial employee in an appropriate proceeding earlier. Section 33C(2) can be used for the purpose of computing the previously adjudicated or admitted claim.

10. In the present case the claim of the employee was denied by the employer. Initially he claimed reinstatement, then commission of Rs. 2 lakhs and then Rs.16,60,000/-. The claim was never admitted by the employer and was disputed. The Labour Court

could not have granted the claim in an application under section 33C(2) of the Act. The Labour Court lacked jurisdiction to entertain such a claim and pass an order. For these reasons the petition is allowed. Rule is made absolute in terms of prayer clause (a) with costs.

(D. G. KARNIK **J**)